

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of New)	NOTICE OF ADOPTION AND
Rule I and the amendment of ARM)	AMENDMENT
2.5.120, 2.5.201, 2.5.202, 2.5.301)	
through 2.5.303, 2.5.401, 2.5.402,)	
2.5.404 through 2.5.408, 2.5.501)	
through 2.5.503, 2.5.601 through)	
2.5.604, 2.5.606 through 2.5.609,)	
2.5.701, 2.5.702, and 2.5.801 pertaining)	
to procurement of supplies and services)	
and surplus property)	

TO: All Concerned Persons

1. On August 23, 2007, the department published MAR Notice No. 2-5-381 regarding a public hearing on the proposed adoption and amendment of the above-stated rules at page 1116 of the 2007 Montana Administrative Register, Issue No. 16.

2. On September 12, 2007, the department held a public hearing on the proposed adoption and amendment.

3. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT #1: One commenter requested that the exception noted for the Montana State Library in ARM 2.5.301(2)(o) be applicable to other libraries such as the State Law Library, Historical Society Library, Parmly Billings Public Library, university libraries, etc. Another commenter suggested that this provision apply to all state agencies.

RESPONSE #1: The department agrees with the comments and amends the rule accordingly.

COMMENT #2: A comment was received stating the wording of ARM 2.5.401(2) was confusing.

RESPONSE #2: The department agrees and is revising the language.

COMMENT #3: A comment was received suggesting alternative language in ARM 2.5.501.

RESPONSE #3: The department agrees that the text could be clearer and is making changes to (1), (2), and (7)(i).

COMMENT #4: A comment was received suggesting alternative language in ARM 2.5.502.

RESPONSE #4: The department agrees that the rule could be clearer and is making changes to (1) and (2).

COMMENT #5: A comment was received regarding ARM 2.5.503(5) and the responsibility for posting of evaluation meetings on the General Services Division's (GSD) web site.

RESPONSE #5: Agencies will be given rights to post their meetings to the GSD web site. The rule is amended as proposed.

COMMENT #6: A comment received regarding ARM 2.5.601(12) stated that "product" and "supply" mean the same.

RESPONSE #6: The department will not change the rule as this is the language used in the statute upon which the amendment is based.

COMMENT #7: A commenter suggested that ARM 2.5.602(2)(e) specify that price must be weighted at a minimum of 20% of the evaluation points.

RESPONSE #7: While the department strongly recommends that agencies allocate at least 20% of the evaluation points to price for an RFP, this requirement will not be included in this rule.

COMMENT #8: A commenter questioned the approval of direct negotiation required by the department in ARM 2.5.608(2)(c) if an agency's solicitation was within its delegated authority.

RESPONSE #8: This is not a change in the requirements already established in this rule and the department amends the rule as proposed.

COMMENT #9: A commenter noted that in ARM 2.5.801(1) the use of "the Department of Administration" rather than simply "the department" was not necessary as "department" is defined in ARM 2.5.201.

RESPONSE #9: The department agrees and makes the suggested change.

4. The department has adopted New Rule I (ARM 2.5.304) as proposed.

5. The department has amended ARM 2.5.120, 2.5.201, 2.5.202, 2.5.302, 2.5.303, 2.5.402, 2.5.404, 2.5.405, 2.5.406, 2.5.407, 2.5.408, 2.5.503, 2.5.601, 2.5.602, 2.5.603, 2.5.604, 2.5.606, 2.5.607, 2.5.608, 2.5.609, 2.5.701, and 2.5.702, as proposed.

6. The department has amended ARM 2.5.301, 2.5.401, 2.5.501, 2.5.502, and 2.5.801 as proposed, but with the following changes, stricken matter interlined, new matter underlined:

2.5.301 DELEGATION OF PURCHASING AUTHORITY (1) through (2)(n) remain as proposed.

(o) books and periodicals ~~purchased by the Montana State Library.~~

AUTH: 18-4-221, MCA

IMP: 18-4-132, 18-4-221, 18-4-222, 18-4-302, MCA

2.5.401 VENDORS LIST (1) remains as proposed.

(2) To be placed on the vendors list, a vendor must register with the division online at <http://www.vendor.mt.gov/>. Each vendor is responsible for keeping their information current, including selection of the categories, quote groups, and items of which identify the supplies or services the vendor wishes to provide.

AUTH: 18-4-221, MCA

IMP: 18-4-221, MCA

2.5.501 SPECIFICATIONS (1) Specifications shall clearly describe the state's requirements and allow for ~~obtaining the procurement of~~ a supply or service ~~which that~~ is adequate, suitable, and cost-effective for the state. Specifications may take into account, to the extent practicable, the costs of ownership and operation as well as initial acquisition costs and shall permit maximum practicable competition consistent with this purpose.

(2) Specifications shall, to the extent practicable, emphasize functional or performance criteria and limit design or other detailed physical descriptions to those necessary to meet the needs of the state. ~~To facilitate the use of the criteria, an~~ An agency shall ~~attempt to include,~~ as a part of their requisitions, the principal functional or performance needs to be met, and any compatibility requirements.

(3) through (7)(h) remain as proposed.

(i) ~~receiving acceptance~~ acceptance procedures (if testing, sampling, or other evaluation will be performed when commodity is delivered to determine acceptability) must be described.

AUTH: 18-4-232, MCA

IMP: 18-4-231, 18-4-232, 18-4-233, 18-4-234, MCA

2.5.502 BID, PROPOSAL, AND CONTRACT PERFORMANCE SECURITY

(1) ~~If the state~~ an agency requires bid or proposal security and/or contract performance security, the types of security that may be used are those specified in 18-4-312, MCA.

(2) The department will supply bid and proposal security bond forms and contract performance security bond forms when security is required. These are the only acceptable forms for surety bond or irrevocable letter of credit submission.

(3) through (8) remain as proposed.

AUTH: 18-4-221, MCA
IMP: 18-1-201, 18-4-312, MCA

2.5.801 ADOPTION OF STATE PLAN OF OPERATION-FEDERAL SURPLUS PROPERTY (1) As authorized by 18-5-202, MCA, the ~~D~~department of ~~Administration~~ adopts and incorporates by reference the "State of Montana, Federal Surplus Property Plan of Operation in Compliance with 41 FR 101-44 and Public Law 94-519" (State Plan of Operation) promulgated by the department and filed with the General Services Administration of the United States government on July 1, 1977, and as revised March 19, 1984, pursuant to section 201(j)(4) of the Federal Property and Administrative Services Act of 1949 (40 USC 484).

(2) and (3) remain as proposed.

AUTH: 18-5-202, MCA
IMP: 18-5-202, MCA

By: /s/ Janet R. Kelly
Janet R. Kelly, Director
Department of Administration

By: /s/ Dal Smilie
Dal Smilie, Rule Reviewer
Department of Administration

Certified to the Secretary of State October 15, 2007.